

A-70737

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

TESSEMA D. SHIFFERAW

Serial No. 09/909,953

Filed: July 19, 2001

For: MACHINE FOR DOING SQUATS
AND OTHER EXERCISES

Examiner: Glenn E. Richman

Group Art Unit: 3764

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**SUPPLEMENTAL
BRIEF ON APPEAL**

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Table of Contents

	Page
Real Party in Interest	1
Related Appeals and Interferences	1
Status of Claims	1
Status of Amendments	1
Related Applications/Patents	1
Summary of Invention	1
Issues	2
Grouping of Claims	2
Argument	2
Claims 1, 2, 4 and 6 - 9	2
Claims 3 and 5	4
Claim 13	4
Summary and Conclusion	5
The Claims on Appeal	Appendix A

REAL PARTY IN INTEREST

The real party in interest is the inventor and applicant, Tessema Dosho Shifferaw..

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

The application was originally filed with Claims 1 - 12, and Claim 13 was added by an Amendment filed May 27, 2003, and Claims 1, 8 and 10 were amended in an Amendment filed January 23, 2004. Claims 10 - 12 have been allowed since the appeal was taken, and Claims 1 - 9 and 13 remain on appeal.

STATUS OF AMENDMENTS

No amendments have been filed since the action from which the appeal is taken, although the Examiner has reopened prosecution and issued another non-final action.

RELATED APPLICATIONS/PATENTS

None.

SUMMARY OF INVENTION

The invention is a machine for doing squats and other exercises. As illustrated in Figures 1 and 2 of the drawings and described at pages 1 - 3 of the specification, the machine has a platform 14, 16 for receiving an exerciser, a post 11 which extends in an upward direction from the platform, a carriage 13 which can be moved up and down the post by the exerciser, and a plurality of elastic elements 26 which can be selectively connected to the carriage to assist or resist movement of the carriage in either direction along the post. The elastic elements are connected between the carriage and a pair of cross-arms 27, 28 which are affixed to the post.

The machine is portable, with the two sections of the platform being hinged together for movement between an operational position in which both of the sections extend in a horizontal direction and a storage position in which the outer section 14 is folded up at an angle relative to the inner section 16. Wheels 31 are attached to the base to facilitate moving the machine about.

The machine can be used for doing a variety of exercises, some of which are illustrated in Figures 3 - 8.

Squats can be done as illustrated in Figures 3 - 4, with the exerciser standing on the platform and leaning back toward the post, with his back resting against backrest 22 and his hands gripping handles 23. The post is inclined at a comfortable angle which prevents stress on the back or knees, and elastic cords 26 connected between the carriage and upper cross arm 27 lift the carriage and assist the exerciser in straightening his legs as he comes up. These cords also provide resistance on the way down, which works the hamstrings and gluteus maxmums.

Lunges can be done as illustrated in Figures 5 - 6, by placing one foot toward the front of the platform and one toward the rear, with the back resting against the backrest and the hands gripping the handles. The exerciser then drops down onto the rear knee and rises again, with elastic cords 26 connected to the upper cross arm assisting the upward movement and resisting the downward movement.

To do biceps curls, the exerciser stands on the platform facing the post, with his hands gripping the handles from below, as shown in Figure 7. Cords 26 connected between the carriage and the lower cross arm resist upward movement of the exerciser's arms as they pivot about the elbows.

For triceps extensions, the exerciser kneels on the platform facing the post, with his hands gripping the handles from above, as shown in Figure 8. Cords 26 connected between the upper cross arm and the carriage resist movement of the arms in the downward direction as they pivot about the elbows.

The enables people who otherwise could not do so to do multiple repetitions of deep knee bends or squats, and it can also be used in other exercises for the arms, legs, shoulders and back. It can provide assistance as well as resistance, and the amount of assistance or resistance is readily adjusted simply by changing the number and position of the elastic cords. The machine is relatively compact, and is easily stored in a closet or under a bed when not in use.

ISSUES

Whether the Examiner has erred in rejecting Claims 1, 2, 4 and 6 - 9 under 35 U.S.C. §102 as being anticipated by Graham (U.S.4,706,953).

Whether the Examiner has erred in rejecting Claims 3 and 5 under 35 U.S.C. §103 as being unpatentable over Graham in view of Sokol (U.S. 5964,684).

Whether the Examiner has erred in rejecting Claim 13 under 35 U.S.C. §103 as being unpatentable over Graham.

GROUPING OF CLAIMS

It is not acceptable to applicant to have the claims stand or fall together within the group in which they have been rejected. Different claims include an different limitations, and the Board could very well find that at least some of the claims are directed to patentable subject matter even if it were to affirm the Examiner's rejection of others.

ARGUMENT

Claims 1, 2, 4 and 6 - 9

In order to be a proper basis for rejection under 35 U.S.C. §102, a reference must show each and every element of the claimed invention, which Graham clearly does not do. Initially, it should be noted that Graham is concerned with a different type of machine than applicant's invention -- one which is intended to provide cardiovascular stimulation

and only passive exercise of most body components, rather than one for doing active exercises such as deep knee bends, lunges, squats or arm curls.

The device shown in Graham consists essentially of a platform which rolls on a pair of horizontally extending tracks, with bungee cords connected to both ends of the platform for sustaining an oscillating motion once the platform is set in motion. Although Graham does suggest elevating one end of the tracks to a limited degree in order to provide greater inertial forces in one direction, it does not suggest a machine having an upright post and a carriage for doing active exercises as in applicant's invention.

Although creative, the Examiner's attempt to interpret Graham to fit the invention is distorted and inaccurate and would not make the claims read on reference even if it could be given that interpretation. As clearly shown in Figure 1, the exerciser rests in a supine position on a horizontal platform 10 which rolls along tracks 15, 16. Panel 21, characterized by the Examiner as a horizontal platform for receiving an exerciser, is an upright panel which anchors one end of the bungee cords and can also be pushed against by one or both of the feet of the person resting on the platform. Even when one end of the tracks is elevated as illustrated in Figure 3, the panel is still upright, and the person rests on and is supported by the rolling platform which is still substantially horizontal. Element 18, characterized by the Examiner as an upright post mounted on the platform is actually a cross member which extends between the tracks at the end opposite the panel (18) which the Examiner has characterized as the platform on which it is supposed to be mounted.

Claim 1 distinguishes over Graham in calling for a horizontally extending platform for receiving an exerciser, an upright post mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser, and a plurality of elastic elements which can be selectively connected to the carriage to assist or resist movement of the carriage in the upward and downward directions. Without each and every one of those elements, Graham does not anticipate, and the rejection is clearly erroneous.

Claims 2, 4 and 6 - 7 and 13 depend from Claim 1 and are directed to patentable subject matter for the same reasons as their amended parent claim. In addition, they call for additional features which are not found in the references.

Claim 2, for example, specifies that the carriage includes a backrest for receiving the back of the exerciser on the platform, and Claim 4 further distinguishes in specifying that the post is inclined at an angle relative to the platform.

Claim 6 calls for a plurality of rollers which mount the carriage to the post for rolling movement along the post, and Claim 7 specifies that the elastic elements are bungee cords.

Claim 8 distinguishes over Graham in calling for a horizontally extending platform for receiving an exerciser, an upright post mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser,

horizontally extending arms affixed to the post above and below the carriage, and a plurality of elastic elements which can be selectively connected between the carriage and the arms to assist or resist movement of the carriage in the upward and downward directions.

Claim 9 depends from Claim 8 and is directed to patentable subject matter for the same reasons as its parent claim. In addition, it specifies that the elastic elements are bungee cords.

Claims 3 and 5

Initially, it should be noted that Claims 3 and 5 depend from Claim 1 and are directed to patentable subject matter for the same reasons as their parent claim. In addition, they call for additional features which serve to further distinguish over the references.

In rejecting Claims 3 and 5 as being unpatentable over Graham and Sokol, the Examiner is attempting to combine selected elements from two different references when there is no motivation or other basis in the references themselves for doing so. This is a classic case of impermissible hindsight reconstruction in which the Examiner is using applicant's own disclosure and claims as a blueprint for selecting the different elements and putting them together.

The Examiner cites Sokol as showing handles attached to a carriage and then suggests that it would have been obvious to use those handles with Graham's carriage because Sokol teaches the use of handles with a carriage. That, however, totally ignores the teachings of Graham in which the person is secured to the rolling platform both by a belt assembly 55 and by shoulder straps 50, 51, draws the platform along the tracks with lines 29, 30, and there is no need for the handles on the platform.

The Examiner also attempts to justify the addition of handles to the platform in Graham by arguing that Graham discloses the use of handles for moving the platform. That, however, seems to be somewhat inconsistent with the Examiner's acknowledgment earlier in the same rejection that Graham does not disclose that the carriage includes handles. If the Examiner is referring to the handles attached to lines 29, 30, he has failed to show how the presence of those handles in any way suggest the use of handles on the platform. As noted above, the presence of the lines for moving the platform actually teaches away from the inclusion of handles on the platform itself.

Sokol is also cited as showing a post and an adjustable platform, but the Examiner fails to suggest how he proposes to combine those elements with the teachings of Graham or where he finds motivation for doing so.

Claim 13

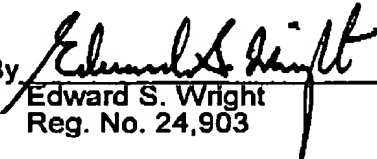
Contrary to the Examiner's suggestion, the machine shown in Graham was never intended to be stood on end panel 21, and there is no motivation in Graham for doing so. This is just another case of hindsight reconstruction on the part of the Examiner.

As seen in Figure 1, bungee cords 23 extend beyond end panel 21 and would make it impossible to stand the machine on that end. Moreover, standing the machine on the panel would prevent access to the end portions of the cords and make it impossible to engage them with and disengage them from the slots in the panel, thereby making it impossible to adjust the tension in the cords. Furthermore, given the relatively small size of the end panel, the machine could easily topple over if it were stood upright on the end panel. In Figure 3, where the tracks are inclined, the machine still rests on the tracks, prop 47 will not support the tracks much higher than they are shown, and this certainly does not suggest standing the machine on its end.

SUMMARY AND CONCLUSION

It is once again respectfully submitted that the rejections which the Examiner has made cannot be sustained and that the action of the Examiner should be reversed.

Respectfully submitted,

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The Claims on Appeal

1. An exercise machine comprising: a horizontally extending platform for receiving an exerciser, an upright post mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser, and a plurality of elastic elements which can be selectively connected to the carriage to assist or resist movement of the carriage in the upward and downward directions.

2. The exercise machine of Claim 1 wherein the carriage includes a backrest for receiving the back of the exerciser on the platform.

3. The exercise machine of Claim 1 wherein the carriage includes a handle adapted to be gripped by the exerciser.

4. The exercise machine of Claim 1 wherein the post is inclined at an angle relative to the platform.

5. The exercise machine of Claim 4 wherein the angle between the post and the platform is adjustable.

6. The exercise machine of Claim 1 including a plurality of rollers which mount the carriage to the post for rolling movement along the post.

7. The exercise machine of Claim 1 wherein the elastic elements are bungee cords.

8. An exercise machine comprising: a horizontally extending platform for receiving an exerciser, an upright post mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser, horizontally extending arms affixed to the post above and below the carriage, and a plurality of elastic elements which can be selectively connected between the carriage and the arms to assist or resist movement of the carriage in the upward and downward directions.

9. The exercise machine of Claim 8 wherein the elastic elements are bungee cords.

13. The exercise machine of Claim 1 wherein the platform is adapted to rest on a horizontally extending supporting surface, and the post is supported by the platform.

Appendix A